INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1945

No.

J. R. MASON, PETITIONER

v.

PARADISE IRRIGATION DISTRICT, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

J. R. Mason prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit, entered in the above case on May 11, 1945, affirming the decision of the United States District Court.

OPINIONS BELOW.

The opinion in the District Court (R. 44, 185, 200). The opinion in the Circuit Court of Appeals (R. 215) is not yet reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on May 11, 1945 (R. 215). The jurisdiction of

this Court is invoked under Section 240(a) of the Judicial Code (28 U.S.C., Sec. 347(a)).

QUESTIONS PRESENTED.

1. Whether the judgment below is inconsistent with the rule of equality among creditors invoked by the Circuit Court of Appeals for the Fifth Circuit in *State of Texas v. Tabasco Cons. School Dist.*, 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58.

2. Whether the judgment contravenes the well settled rule that State law and decisions govern the substantive and procedural rights of holders of the bonds of a State, or its political subdivision, issued under authority of the power of the sovereign State to borrow money, and that such power, when exercised is immune, with or without State consent, from the will of Congress, or its Courts.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statutes involved are California Stats. 1897, p. 254 as amended, being the California Irrigation District Act; Stats. 1913, p. 778, the Districts Securities Commission Act; 11 USCA 301-304 (48 St. 798); 11 USCA 401-403 (52 St. 940) and (50 St. 654) adding Sections 81 to 83 to the Bankruptcy Act of 1898.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In denying petitioner the privilege of receiving the same refunding 4% bonds, with accrued interest, as given the only other creditor at bar, the R.F.C., and ordering petitioner to accept $525.21 cash for each $1000 par value 6% gold bond.

2. In sustaining the decree of the District Court which unlawfully deprives petitioner of substantive and procedural vested rights governed by State law and decisions, in contravention of State law, the source of the substantive rights and duties of the parties.

STATEMENT.

This case involves the substantive and procedural rights of J. R. Mason, petitioner, as owner and holder of valid, binding and unpaid general obligation bonds of respondent, a political subdivision of the State of California, whose fiscal powers and duties are ruled by State law and decisions, and the force and effect of the interlocutory decree of the District Court, as it deprives petitioner of vested rights, in a proceeding by respondent under the provisions of 11 USCA 401-403.

The facts relating to the nature and activities of agencies of the State of California ruled by the same law as respondent were construed by this Court in

Fallbrook I. D. v. Bradley, 164 U. S. 112, and as pointed out in *Brush v. Commissioner,* 300 U. S. 352, at 366-369. Also by the Attorney General of the United States in *30 Ops. 252,* January 30, 1914, and *38 Ops. 563,* February 1, 1937.

REASONS FOR GRANTING THE WRIT.

I.

Petitioner moved to amend the judgment (R. 181) to have it provide that petitioner should get the same treatment as the only other creditor in the case, i.e., Reconstruction Finance Corporation, upon whose consent, as bondholder the case would stand or fall. The plan of composition, as it stands is neither fair nor equitable, because it permits the R.F.C. to get refunding bonds carrying 4% interest, together with full 4% on the funds advanced to respondent in 1934, and denies equal treatment for petitioner, who is ordered to accept $525.21 in cash for each $1000 par value bond, with less than 4% interest since respondent defaulted on the bonds in 1934, depriving petitioner of the equal right to receive refunding 4% bonds, and the privilege of receiving 4% interest until they become due and are paid, on the same terms as given to the R.F.C. The proof of claim of petitioner is shown (R. 161). Terms of the agreement between R.F.C. and respondent are shown (R. 74). Similar provisions as in the instant case governed the agreement between

R.F.C. and the Tabasco Cons. School District, made under authority of Section 36, part 4, of the Emergency Farm Mortgage Act of 1933, known as Public No. 78, 73rd Congress, approved June 16, 1933. This law authorized R.F.C. to make loans to districts, when it (C)

> "has been satisfied that an agreement has been entered into between the applicant and holders of its outstanding bonds or other obligations under which the applicant will be able to purchase or refund all *or a major portion* of such bonds * * * at a price determined by the Corporation to be reasonable * * *"

The record shows that the loan applied for by respondent was disbursed by letter dated December 17, 1934 (R. 87) from R.F.C. to the Federal Reserve Bank of San Francisco, over 93% of the old bonds having been deposited for acceptance of the cash offer of $525.21 and it must be that R.F.C. was satisfied that 93% acceptance was the "major portion" required to enable them to disburse. The first attempt to bludgeon petitioner into accepting this same settlement, under Chapter IX, failed (R. 89) on the ground that "* * * the Court is without jurisdiction to entertain the petition * * *". For more than a decade petitioner has resisted activities which this Court has pronounced unconstitutional, fomented by powerful economic and social forces, not alone because of his pecuniary interest in the cases, but because he is a believer in the

soundness of the basic principle of constitutional law, i.e., the doctrine of reciprocal immunity, steadfastly adhered to by this Court, and not modified or repudiated by anything said in the *U. S. v. Bekins* (304 U. S. 27) case.

Petitioner's willingness to adjust his claims is shown in the letters (R. 128-132) but he opposed efforts to bludgeon him into surrendering his bonds by methods he believed unconstitutional, and was sustained (R. 89). Undaunted, the same economic forces set out to purge petitioner again, under the identical facts, so that it is evident that they were unwilling to accept this Court's judgment as final or in any way binding upon them.

The offer by petitioner to accept the same 4% bonds on the same terms as the R.F.C. (R. 181-209) was refused, and this refusal raises a clear conflict with the rule adopted by the Fifth Circuit Court of Appeals in the *Tabasco* case, supra (133 Fed. (2d) 196, 142 Fed. (2d) 58), in which case the Court overruled protests and objections advanced by the R.F.C. to the equality treatment requested by the State of Texas, which held the only bonds involved in that proceeding not controlled by the R.F.C. The facts are parallel as regards the relative claims of petitioner and the R.F.C. in the instant case, and the judgment below discriminates in favor of the R.F.C., and it therefor is fatally defective under the limitations of 11 USCA 403.

In *Kaufman Co. Levee Imp. Dist. v. Mitchell*, 116 Fed. (2d) 959, the Circuit Court for the Northern District of Texas, in refusing to approve a plan of composition under Chapter IX, used this language:

> "(1, 2) * * *. It is a fundamental principle of the bankruptcy law that there shall be equality among creditors of the same class and that the holders of residuary interests, such as stockholders and others similarly situated, shall not participate to the prejudice of creditors. * * *"

In *American United Mutual Life Ins. Co. v. Avon Park*, 311 U. S. 138, this Court, in reversing the judgment, used this language:

> "The fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard. The former is not a substitute for the latter. They are independent. (Citations.)"

The other original bondholders in the instant case, took cash for their bonds in 1934 (R. 87), and never consented to the instant proceeding, which was not begun until November 4, 1937 (R. 5).

Petitioner submits that the instant case is not in any respect analogous to or comparable with a situation where a debtor can borrow money from an outside person, who, at the time the offer was made, placed in escrow the money with which to take up the bonds if the plan is approved. In the case at bar, the R.F.C.

is obligated to take refunding 4% bonds as provided in the plan, regardless of the outcome of this proceeding.

It is submitted that in view of the fact that the R.F.C. had already paid out its money, and contracted to take the refunding bonds several years before the District filed its plan of composition, November 4, 1937, the R.F.C. is in a different position from petitioner, because he is not under obligation to accept either $525 cash for his old bonds, or to take refunding bonds for his investment, as the R.F.C. had contracted to do. The R.F.C. is not entitled in law or in equity to enjoy such an advantage, as the Court below sanctioned, to the prejudice of petitioner, the only holder of original unpledged bonds.

If it is assumed that the contract between R.F.C. and the District, executed in 1934 (R. 74), does not obligate the R.F.C. to take refunding bonds equal in par value to the money loaned, but left R.F.C. as a creditor on an equal footing with petitioner, and the R.F.C. is permitted to get 4% thirty year bonds on a 52% basis for each original bond it holds, then, by the same token, petitioner should have been permitted to get similar new bonds for his proportion of said original indebtedness. In the trial Court, petitioner offered to accept his pro rata in new bonds, in lieu of the 52 cents in cash. The trial Court, without any reason given therefor, refused this offer made by petitioner, but permitted the R.F.C. to get 100% upon its

investment, with full 4% interest, and also to get refunding 4% thirty year bonds.

Whether it would have been best to require petitioner to take cash is not a question that should concern the trial Court. Since petitioner offered to accept the new bonds on the same terms as the other creditor, the R.F.C., the Court should not have denied him that privilege, and at the same time give R.F.C. that privilege.

II.

That respondent is the *alter ego* of the State, and that the bonds at bar are contracts, not between individuals, but between the State and petitioner, and therefore immune from federal control or interference, whether the federal statute stems from the taxing clause or the bankruptcy clause, is the contention of petitioner.

If a federal statute or court may treat the substantive and procedural rights of holders of the bonds here involved as the property of some other person than the one whom the bond contract has designated, the State government has thereby been interfered with and prevented from fulfilling the obligation into which its agent has entered, by a simple statute of Congress, and the result would contravene the rule of law announced in *Pollock v. Farmers L. & T. Co.*, 158 U. S. 602, 630, as follows:

> "We have unanimously held in this case that so far as the law operates on the receipts from municipal bonds, it cannot be sustained, because it is a tax on the power of the states, and on their instrumentalities to borrow money, and consequently repugnant to the Constitution."

Differing fundamentally from the bonds involved in *Keefe v. Clark, Oakland Co. Drain Comm.*, 322 U. S. 393, the bonds at bar are not a "debt" in the usual sense, but statutory land-tax and rent anticipation trust certificates, which the Legislature lawfully authorized and protected by making it the duty of respondent to administer all land acquired for unpaid taxes as a beneficent landlord, exempt from State taxation, and to apply the revenues derived from the sale, lease or management of the land within its boundaries as a public trust, according to the laws at the time the bonds were issued.

Shouse v. Quinley, 3 Cal. (2d) 357;
Selby v. Oakdale, 140 Cal. App. 171;
Provident v. Zumwalt, 12 Cal. (2d) 365;
El Camino v. El Camino, 12 Cal. (2d) 378;
Moody v. Provident, 12 Cal. (2d) 389;
Anderson Cottonwood v. Klukkert, 13 Cal. (2d) 191;
Metropolitan Water District v. Riverside County, 21 Cal. (2d) 640;
Anderson Cottonwood v. Zinzer, 51 Cal. App. (2d) 582.

These judicial determinations by the highest State Court govern the powers, rights and duties of respondent and establish the bonds at bar as being in no sense analogous to special assessment bonds, because the bonds are simply an assignment of tax and rent money, and after delivery there is no future obligation, either absolute or contingent, to pay out anything except the receipts from the tax levies anticipated, when collected as taxes or rent.

These State decisions clearly and unequivocally establish respondent as merely a nominal instrumentality, and the State as the real party in interest, and this proceeding is in substance one by the State which does not lie within the jurisdiction of the Federal Courts, even though the State of California offers to consent to the federal jurisdiction (*Cargile v. N. Y. Trust Co.*, 67 Fed. (2d) 585; *Ex parte Ayers*, 123 U. S. 443). Neither State consent nor submission can enlarge the powers of Congress (*Ashton v. Cameron Co.*, 298 U. S. 513). This rule of law was not reversed in *U. S. v. Bekins*, 304 U. S. 27.

Mr. Justice Jackson in his book, "The Struggle for Judicial Supremacy", writes on page 167 that the federal law under which this proceeding arises (11 USCA 401-403), "* * * was not one extending federal power". Although State consent was required by the provisions in 11 USCA 301-304, that requirement was omitted from the amended statute, 11 USCA 401-403,

under which State consent or lack of State consent is irrelevant and immaterial.

The scope of the bankruptcy clause either reaches the fiscal affairs of a State and its political subdivisions, or it does not, and if it does, no State can oppose control or limit the exercise of this federal power over its borrowing and taxing power.

It can not be denied that the source of the substantive rights of petitioner in the bonds at bar, is the laws of California, and that those rights have been authoritatively declared by the highest State Court in the cases cited, supra. That these substantive rights are governed by State law and decisions, and not by federal legislation, appears to have been reaffirmed by this Court on June 19, 1945, in *Guaranty Trust Co. v. York*, No. 264, October 1944 Term, where it was said:

> "To make an exception to *Erie RR v. Tompkins* on the equity side of a federal court is to reject the considerations of policy which after long travail, led to that decision * * * The source of substantive rights enforced by a federal court under diversity jurisdiction, it can not be said too often, is the law of the States. Whenever that law is authoritatively declared by a State, whether its voice be the legislature or its highest court, such law ought to govern litigation founded on that law, whether the forum of application is a State or federal court and whether the remedies be sought at law or may be had in equity."

Because State law and decisions control the rights of holders of local bonds in a proceeding brought by a bondholder in a Federal Court (*Huddleston v. Dwyer*, 322 U. S. 232), *a fortiori* reason indicates that the same law and decisions must control the rights of the parties in a proceeding brought by the local government against the bondholder, in a federal forum.

Respondent is a taxing instrumentality of the State government, and this Court has repeatedly said that, in matters of taxation, Federal Courts will follow rulings of State Courts on all questions involving the tax laws of the State (*Bardon Land & River Imp. Co.*, 157 U. S. 327, 330; *Ballard v. Hunter*, 204 U. S. 241, 262; *Lewis v. Monson*, 151 U. S. 545, 549). Before litigation resulting in exonerating taxpayers from taxes mandatory by the State Constitution is approved, it must clearly appear that none of the fundamental guaranties contained in the Federal Constitution has been invaded (*Wood v. Lovett*, 313 U. S. 362).

> "When a State becomes a party to a contract, as in the case before us, the same rules of law are applied to her as to private persons under like circumstances. *When she or her representatives are properly brought in the forum of litigation, neither she nor they can assert any right or immunity as incident to her political sovereignty.*" (Emphasis ours.)
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> *Davis v. Gray*, 83 U. S. 203 (21 L. ed. at p. 457).

The effect of the decree, if it stand, can only be to make a gift of public funds to private parties holding land, and to give them a tax-rate ceiling where none exists under State law. The full rent value of all the land within the taxable boundaries of respondent belongs to respondent ahead of any right or claim by a county, or mortgage holder, and any land title acquired from a county or the State is strictly subject to taxation by respondent to pay the bonds owned by petitioner, with interest (*Provident v. Zumwalt*, supra; *Anderson Cottonwood v. Klukkert*, supra; *Fallbrook v. Cowan*, 131 F. (2d) 513). In other words, the effect of the decree, if it stand, will be to circumvent a ceiling on rent fixed by State law, because it will result in permitting the private appropriators of rent to pocket more rent, after the reduced taxes that respondent will levy annually on the value of privately held land, to service its reduced bond obligations. The unearned increment thus created will be capitalized into higher prices for land titles by those who have gotten exoneration from their tax paying duties, thus making it more costly for homeseekers to acquire locations in the district whether for homes, orchards, farms or stores.

Neither the general welfare nor the best interests of the soldiers and sailors now fighting abroad, will be protected by depriving petitioner of the substantive rights in his bonds.

In support of the contention that taxes payable by the private holders of land, in proportion to its rent value, can not increase living costs, but on the contrary stimulate production, see

"Wealth of Nations", Book V, Ch. 2, part 2, by Adam Smith;

"Principles of Political Economy", Book V, Ch. III, Sec. 1, by John Stuart Mill;

"Principles of Economics", p. 540, by Taussig (3d Rev. ed.).

The Court may take judicial notice of the feverish activity by speculators in titles to California irrigated lands, within the districts that have cut their land taxes since the enactment of the original and amended Chapter IX of the Bankruptcy Act. The rise in land prices has equalled if not exceeded the difference between the original bonds of the district, and the composition figure, in every instance, all of which has hampered instead of helping homeseekers. Feudalism has been raised to power in California, as never before, while the holders of public bonds irrevocably certified by the State a lawful investment of all trust funds, and financial institutions (Stats. 1913, p. 778) have been subjected to a repudiation campaign promoted and carried on by land speculators and mortgage holding interests, which have never been willing to accept as settled the law creating respondent, as interpreted by this Court in *Fallbrook v. Bradley,* supra, and the

rights of bondholders, as construed in *Moody v. Provident*, supra, which the decree below contravenes.

Unless it lies within the authority of Congress, by simple statute, and with or without State consent, to abolish the powers and duties of respondent, as it admittedly could abolish such an instrumentality as the Port of New York Authority, it is wholly inaccurate to treat respondent as an instrumentality over whose fiscal affairs Congress possesses any regulatory jurisdiction, under any circumstances.

Recent decisions holding that officers and employees of a State or State instrumentality are not immune from the federal income tax laws, have carefully distinguished between the incomes from salaries, and from general obligation bonds of the political subdivisions of a State, like those at bar. The rule that because a tax on receipts from municipal bonds is equivalent to "a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution" (158 U. S. at 630) has not been abandoned either directly or by implication. This rule is based upon the reasoning that such a tax would compel the States and local governments to put out higher interest bearing bonds, which would result in putting up the local property tax rates, which Congress is not permitted to do, because of the regulation of apportionment. But, whether the Act of Congress would result in putting up local tax rates, or in reducing them, as in the case at bar, the rule of

constitutional law must apply with equal force, in both cases. Otherwise it is possible for Congress to abolish land taxes lawfully payable to a State, although Congress can not tax the same land.

Even Alexander Hamilton said in The Federalist Essay XXXIII:

> "Suppose again, that upon the pretense of an interference with its revenues, it (Congress) should undertake to abrogate a land-tax imposed by authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths."

Although the discrimination against petitioner and favoring the R.F.C. shown above, stamps the decree as unfair and inequitable, the second question presented is the basic question, because the issue is squarely raised, in an actual controversy, whether Federal or State law and decisions govern the borrowing and taxing power of a State, when exercised by the State, or by a political subdivision to which the State has confided its sovereign power to tax the value of all land within its boundaries without limitation on tax rate or number of years, to regulate its occupancy and

use, and to administer all land within its boundaries as a beneficent landlord, collecting the full rent value of all land, or as much of it as is needed to keep alive and fulfill its obligations, acting at all times as an agency of the State, all of whose property is State owned, and wholly exempt from taxation by other State agencies.

The powers, rights and duties of districts created under this State law have been settled by this Court and the highest State Courts, and there are no parties even suggesting that their rights would be unlawfully affected by a reversal of the decree below and dismissal of the proceedings.

It is submitted that our constitutional system is dependent on the faithful and proper exercise of the power delegated by the people to their states to levy and collect direct *ad valorem* land taxes, and that this power, when exercised remain independent and uncontrollable by the Congress, in the most absolute and unqualified sense, as explained in The Federalist XXXII, XXXIII, by Alexander Hamilton.

Whether the action by this Court will result in pecuniary loss or gain to petitioner is unimportant in comparison with the basic principle of constitutional law squarely presented, i.e., the doctrine of reciprocal immunity versus the centralization of power.

Believing that it is imperative that the States perform their delegated powers to levy and collect

direct *ad valorem* taxes, in order to lessen their pressure on Congress for grants and subventions, and also to prevent speculators in land titles from reaping unlawfully and where they have not sown, it is submitted that disapproval by this Court of the decree below would constitute a positive step to compel the States to collect a larger share of the total public funds needed, and it would stimulate incentive to put privately held land to its appropriate use, thus increasing the supply of guns and butter, and of everything else found in or on land, and also improve the opportunities for self-employment by keeping down the cost of land titles, and thus promote the general welfare.

Influential economic interests favoring bigger federal grants and subventions to States and local governments are bitterly opposed to direct *ad valorem* taxes by local governments, and are seemingly quite willing that the States should not survive as sovereign States. The doctrine of immunity was adopted by the framers of our Constitution because of their conviction that the unalienable rights of man could not survive in a single, all powerful centralized government. It stemmed from the view, which is just as fundamental today, that the survival of vigorous local self-government and its delegated functions, is indispensible for the existence of liberty, and subsequent history in many other nations, notably in the Weimar Republic of German States over which the "Neuauf-

baugesetz" or "Reconstruction Act" of January 30, 1934, gave the Reichstag supreme power in the Second Article which read, "The sovereign rights of the States are transferred to the Reich" (the same year that Congress passed 11 USCA 301-304 but ruled unconstitutional in the *Ashton* opinion) affords irrefutable proof of the imperative necessity for adhering strictly to this fundamental principle, i.e., the doctrine of reciprocal immunity, which the decree below contravenes.

Jeremiah Sullivan Black in a speech March 10, 1873, to the Pennsylvania Constitutional Convention said:

> "Now, if anything is established by all human experience, it is that no rule of action, no law, no commandment will ever be observed by men who can promote their interests or gratify their passions by breaking it, unless they are deterred by the fear of retributive justice * * * This may seem like a low view of human nature, but we can not help it; we are as we are made."

Basically the question at bar is whether this fundamental and traditional principle of constitutional law shall survive in this Republic, and denial of the petition can only pave the way for the decline of local self-government, civil rights and the common good, at a time when the revival of healthy local self-government vigorously fulfilling its proper functions was never as greatly needed, including its function to regulate the private occupancy of land within its jurisdiction ac-

cording to the laws of its creator, the State, exclusively.

The issue seems crystal clear, "obsta principiis", "resist the beginnings".

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the Court below reversed and the proceedings directed to be dismissed.

Dated, San Francisco, California,
August 1, 1945.

J. R. MASON,
Petitioner in Propria Persona.